

STATEMENT BY
H.E. JUDGE ALBERT J. HOFFMANN
PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
ON
THE ANNUAL REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF
THE SEA FOR 2021
FOR
THE THIRTY-SECOND MEETING OF THE STATES PARTIES TO THE
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

13 June 2022

Madam President,
Distinguished delegates,

1. It is a pleasure for me to address the Meeting of States Parties to present to you the Annual Report of the International Tribunal for the Law of the Sea for the year 2021. I am particularly glad to be here in person, having presented my statement by video link last year owing to the COVID-19 pandemic.
2. On behalf of the Tribunal, I convey to you, Madam President, our congratulations on your election as President of the Meeting of States Parties and wish you every success in the fulfilment of your mandate.
3. The Annual Report of the Tribunal gives an account of the Tribunal's activities for the period 1 January to 31 December 2021. In my statement, I will refer to certain key aspects of the report and I will then provide the meeting with additional information on more recent developments relevant to the work of the Tribunal.
4. I will first address the Tribunal's judicial work, starting with the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in*

the Indian Ocean (Mauritius/Maldives). In my statement to this meeting last year, I set out the background to this case, which was submitted to a special chamber of the Tribunal by special agreement concluded on 24 September 2019. On 28 January 2021, the Special Chamber delivered its judgment on the Preliminary Objections which had been raised by the Maldives. The Special Chamber concluded that it had jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean and that the claim submitted by Mauritius in this regard was admissible. The proceedings on the merits then resumed.

5. The Memorial, Counter-Memorial and Reply were filed within the time-limits fixed by order of the President of the Special Chamber. The Rejoinder of the Maldives is due to be filed on 15 August 2022 and it is expected that public hearings on the merits of the case will follow soon thereafter.

6. The second case I wish to briefly report on is *The M/T "San Padre Pio" (No. 2) Case (Switzerland/Nigeria)*, which concerned a dispute between Switzerland and Nigeria relating to the arrest and detention of the *M/T "San Padre Pio"*, its crew and cargo. In May 2019, Switzerland had initially instituted arbitral proceedings under Annex VII to the Convention against Nigeria in this dispute. Thereafter, on 17 December 2019, the Parties agreed to transfer the dispute to the Tribunal.

7. Switzerland filed its Memorial within the time-limit fixed by order of the President. No Counter-Memorial was filed by Nigeria within an extended time-limit, and the date for the opening of the hearing was subsequently fixed as 9 September 2021.

8. However, by letter dated 30 July 2021, the Agent of Switzerland requested that the opening of the oral proceedings be postponed until a later date "[i]n view of the ongoing implementation of a Memorandum of Understanding ... concluded by Switzerland and Nigeria on 20 May 2021 regarding the issue of the *M/T 'San Padre Pio'*". Having regard to the special circumstances of the case and having sought the views of the Parties, the opening of the oral proceedings was postponed until a later date to be fixed after consultations with the Parties.

9. By letter dated 10 December 2021, the Agent of Switzerland informed the Tribunal that, as of that date, the *M/T "San Padre Pio"* had "exited the exclusive economic zone of Nigeria, and entered the exclusive economic zone of Bénin" and requested the Tribunal to record the discontinuance of the case in accordance with the terms of the Memorandum of Understanding. In response, Nigeria indicated that it had no objection to the discontinuance of the case by the Tribunal. In accordance with article 105 of the Rules of the Tribunal, the President of the Tribunal, by order dated 29 December 2021, placed on record the discontinuance, by agreement of the Parties, of the proceedings and ordered that the case be removed from the List of cases.

10. In 2021, the Tribunal held two sessions devoted to legal and judicial as well as organizational and administrative issues. The Annual Report which is before you includes a review of these issues. The Registrar will address the budgetary matters of the Tribunal in a separate statement. I am pleased to note that, while the March 2021 session had to be held in hybrid format owing to pandemic-related restrictions, the sessions in September 2021 and March 2022 could take place fully in-person.

11. Generally speaking, hybrid and virtual meetings have, of course, been most helpful to the Tribunal in continuing its work during the pandemic. I wish to recall in particular that the Special Chamber of the Tribunal dealing with the *Dispute concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)* held a hearing and deliberations in hybrid format and was thus able to conclude its proceedings on the Preliminary Objections raised by the Maldives.

12. However, I should also note that the opportunity to return to in-person meetings has been most welcome. Hybrid and virtual formats, as helpful as they may be in exceptional circumstances, present numerous challenges. In particular, when judicial hearings are held in hybrid or virtual format, it is of crucial importance that the required technology is available to parties to the dispute in order to secure their participation in the judicial process on terms of complete equality. The Tribunal has been fortunate not to have encountered such difficulties during the conduct of

hearings and deliberations in Case No. 28. Nevertheless, it remains that in-person meetings avoid such technological challenges. They also allow for a much more direct exchange between all participants. And they offer practical benefits – for example, they can be planned more efficiently, without the need to take into account different time zones of remote participants.

13. In this context, I wish to report on the works undertaken by the German Government on the premises of the Tribunal. In August 2021, work began to fully replace the audiovisual equipment in the main courtroom and in the deliberations room. The courtroom will now be equipped with a modern audio system and digital equipment of high quality, including LED video walls and high-resolution screens for judges and the parties' representatives. The installation of this new audiovisual equipment in the courtroom will provide more flexibility for the organization of videoconferences and hybrid meetings. Works are expected to be completed in the courtroom in January 2023 and in the deliberations room in August 2022. The Tribunal is fully operational while these renovations are being carried out, as an interim court room was built within the premises of the Tribunal with all the required facilities before the work began. This interim courtroom has been used for the administrative sessions of the Tribunal and will be dismantled once the main courtroom is operational. I wish to express my gratitude to the German Government for undertaking this work and for ensuring that the Tribunal is equipped with the most modern technology in order to conduct proceedings as efficiently as possible.

14. In addition to its judicial and administrative work, the Tribunal conducts various activities with the aim of providing capacity-building in the law of the sea and increasing awareness of the Tribunal's role in the settlement of disputes. As in previous years, I would like to take this opportunity to update you on these activities. I am pleased to report that, while the capacity-building activities organized by the Tribunal were, of course, affected by the COVID-19 pandemic, we were still able to conduct those activities throughout the years 2020 and 2021.

15. The Tribunal regularly organizes regional workshops that enhance capacity-building in the law of the sea. Owing to the COVID-19 pandemic, no workshop took place during 2020 or 2021. However, the fifteenth regional workshop was held earlier

this month in Malta and was attended by representatives of six States. The workshop, which was co-organized with the IMO International Maritime Law Institute (IMLI), was made possible by the financial assistance of the Republic of Cyprus and the Korea Maritime Institute. I wish to express my sincere appreciation to both the Republic of Cyprus and the Korea Maritime Institute for their generous support and to the IMLI for its cooperation in organizing the workshop.

16. During the period 2021-2022, for the fifteenth time, a nine-month capacity-building and training programme on dispute settlement under the Convention was conducted with the support of the Nippon Foundation. Fellows from Togo, Ecuador, The Gambia, Russia, Italy, Colombia and Nepal took part. All the Fellows were able to travel to Hamburg to complete the programme in-person, although some planned research trips were not possible owing to COVID-19-related restrictions. I am glad to inform you that the selection of candidates for the sixteenth edition of the programme is currently under way. I wish to express the Tribunal's deep appreciation for the ongoing support given to this programme by the Nippon Foundation.

17. In addition, the Tribunal's internship programme offers training opportunities to recent graduates and young government officials. During a three-month internship, interns are exposed to the work of the Tribunal, assisting the Registry with its functions and preparing research papers in relevant fields. In 2021, 11 persons from 11 different States served as interns at the Tribunal.

18. The Tribunal also provides support to the International Foundation for the Law of the Sea, which organizes an annual Summer Academy. Owing to COVID-19-related restrictions, the Summer Academy did not take place in 2020 and operated in a reduced online format in 2021. However, I am pleased to report that a full in-person Summer Academy is due to take place at the premises of the Tribunal in August this year.

19. In order to provide financial assistance to participants from developing countries in the internship programme and the Summer Academy, special trust funds have been established with the support of the Korea Maritime Institute, the China

Institute of International Studies and the Government of China. I wish to express our sincere appreciation to these bodies for their contributions to the trust funds.

20. I am also happy to report that a new capacity-building programme, in the form of a workshop for legal advisers, which had initially been planned for 2020 and then 2021, will now take place in September this year, at the seat of the Tribunal in Hamburg. The purpose of the workshop, funded by the Republic of Korea, is to familiarize legal advisers, in particular from developing countries, with the Convention's dispute-settlement mechanisms and to provide insight into the procedure and practice of the Tribunal.

21. Finally, I wish to note that in September 2021 the Tribunal established a Junior Professional Officer programme for young professionals to serve in the Legal Office of the Tribunal's Registry, or in other departments of the Registry, as necessary. States interested in concluding a memorandum of understanding with the Tribunal regarding the Junior Professional Officer programme are invited to contact the Registrar of the Tribunal.

Madam President,
distinguished delegates,

22. I now wish to remark briefly on current developments relevant to the work of the Tribunal. This year marks the 40th anniversary of the conclusion of the Convention, while 2021 saw the 25th anniversary of the first meeting of the Tribunal. In October 2021, a small commemorative event was held at the premises of the Tribunal in the presence of the judges attending the Tribunal's administrative session, the First Mayor of the City of Hamburg and members of the Consular Corps. Numerous events have also been organized to mark the 40th anniversary of the Convention. Such anniversary events have provided us with an opportunity to pause and reflect on the achievements of the Convention to date, and on future challenges facing the law of the sea.

23. As we look to the future it is clear that the level of international attention being given to the protection of the environment, including the marine environment, is

unprecedented and that the growing momentum around efforts to mitigate climate change is undeniable. The issue of sea-level rise and climate change has numerous implications for the law of the sea.

24. In this regard, there is the question of the effect of sea-level rise, on the baselines from which maritime zones are measured as well as on maritime delimitation agreements. There is also the question of the obligations of States under the Convention in relation to climate change mitigation. Although the Convention does not contain any provisions specifically addressing the issue of climate change, it may be noted that article 192 of the Convention provides that “States have the obligation to protect and preserve the marine environment.” Moreover, under article 194, paragraphs 1 and 2, of the Convention, States are required to “take all measures necessary” to “prevent, reduce and control pollution of the marine environment from any source” and to “ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment”. Some commentators have raised the question whether greenhouse gas emissions could fall within the remit of article 194 when they cause or are likely to cause marine pollution.

25. Another important current issue relevant to the law of the sea is the protection of biodiversity in areas beyond national jurisdiction. As you are well aware, the work of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction will continue in August this year, with numerous issues remaining to be agreed upon, including the question of the settlement of disputes arising under the new agreement. In light of the discussions at the most recent fourth session of the Conference held in March 2022, it seems possible that the eventual dispute settlement mechanism could include the option of requesting advisory opinions from the Tribunal on matters arising under the new agreement.

26. The Tribunal would of course be available to discharge such responsibility. I note in this regard that article 21 of the Statute of the Tribunal provides that the jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal. Article 138 of the Rules

lays down the prerequisites that need to be satisfied before the Tribunal can exercise its advisory jurisdiction. As clarified by the Tribunal in its Advisory Opinion of 2 April 2015, these prerequisites are that an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for an advisory opinion; that the request must be transmitted to the Tribunal by a body authorized by or in accordance with the agreement mentioned above; and, that such an opinion may be given on “a legal question”.

27. In the 25 years of its existence, the Tribunal has made several major contributions to the development of the law of the sea and the peaceful settlement of disputes. From its initial case law on the arrest and detention of vessels and crews, in which the Tribunal provided valuable clarification on the issue of the nationality of ships and developed the notion of “ship as a unit”, the Tribunal has gone on to deal with important aspects of resource exploitation, whether fisheries or the non-living resources of the Area, the protection and preservation of the marine environment and maritime delimitation. In this respect, let me recall that the Tribunal was the first international judicial body to embark on a delimitation of the continental shelf beyond 200 nautical miles, in the Bay of Bengal case between Bangladesh and Myanmar.

28. The Tribunal stands at the disposal of States to continue this work, in the fulfilment of its mandate to settle disputes concerning the application or interpretation of the Convention. I wish to assure you that the Tribunal also stands ready to assist States in whatever way possible in order to meet new challenges facing the law of the sea, whether by answering new legal questions or through the settlement of disputes arising under new instruments such as an eventual agreement on BBNJ.

29. This brings to a close my presentation of the Annual Report of the Tribunal for the year 2021. I am pleased to say that the Tribunal benefits from excellent cooperation with the United Nations and in this respect I wish to express our gratitude to the Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea and his staff for their support and cooperation. I thank you all for your kind attention.